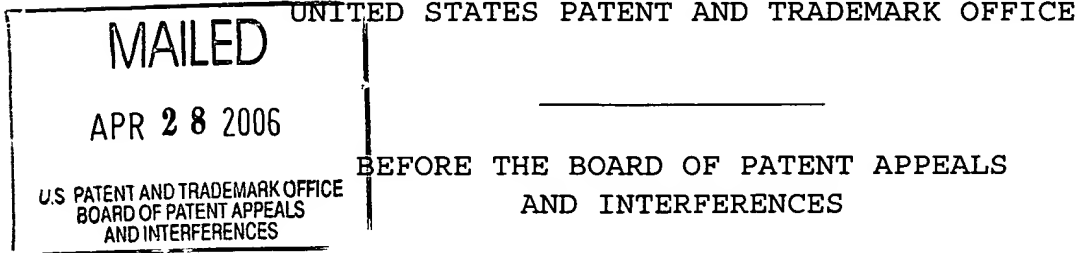


THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.



Ex parte KENGO OCHI and TAKESHI IKEGAMI

Appeal No. 2006-1495
Application No. 09/875,369

ORDER DISMISSING APPEAL

Before FLEMING, Chief Administrative Patent Judge; HARKCOM, Vice Chief Administrative Patent Judge; and ERIC B. GRIMES, Administrative Patent Judge.

Per curiam.

On April 16, 2004, applicants filed a Notice of Appeal. On August 30, 2004, applicants filed an Appeal Brief. In response to applicants' Brief, the examiner entered an Examiner's Answer on October 27, 2004.

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BACKGROUND

On May 18, 2005, the Board of Patent Appeals and Interferences (hereinafter the "Board") mailed an Order Returning Undocketed Appeal wherein the Board ordered the examiner to provide a translation of the prior art reference of Sasahara (JP 11-032608), which was relied upon by examiner in the rejection of claims on appeal. Consequently, this application was assigned to a merits panel for a decision on appeal.

On September 29, 2005, the Board mailed a Remand to the Examiner (hereinafter "Remand") (Appeal No. 2005-2693). According to the requirements set forth in the Remand, the Board required the examiner to submit a Supplemental Examiner's Answer to address matters in the grounds of rejection and appellants' arguments in the brief. Moreover, the Board also stated that in response to the Remand, "'appellant [sic, appellants] must within two months from the date of the supplemental examiner's answer exercise one of' the two options set forth in 37 CFR

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§ 1.41.50(a)(2) . . . to avoid *sua sponte* dismissal of the appeal."

STATUS OF APPEAL

On March 9, 2006, this application was received at the Board. A review of this application reveals that in response to the Board's remand, the examiner mailed a Supplemental Examiner's Answer on December 2, 2005. A review of this application reveals that applicants have not filed a Reply Brief in response to the Supplemental Examiner's Answer, a requirement clearly set forth in the Board's Remand of September 29, 2005.

On April 5, 2006, in a telephone conversation between Carolyn L. Moskey, paralegal specialist for the Board, and Dianna Goldenson, attorney for applicants, applicants decided not to respond to the Board's Remand but, rather, let the application become abandoned.

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CONCLUSION

Accordingly, it is


ORDERED that the appeal filed on April 16, 2004 is hereby
dismissed.

The application is being returned to the examiner for further action as may be appropriate.

Michael R. Fleming
MICHAEL R. FLEMING, Chief)
Administrative Patent Judge)

GARY V. HARKCOM, Vice Chief
Administrative Patent Judge

BOARD OF PATENT
APPEALS AND
INTERFERENCES


ERIC B. GRIMES
Administrative Patent Judge

MRF:clm

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Application No. 09/875,369

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